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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Seventh session

SUMMARY RECORD OF THE 11th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 1 December 1992, at 3 p.m.

Chairman: Mr. ALSTON

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Organization of work (continued)

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GE.92-18692 (E)

The meeting was called to order at 3.15 p.m.

ORGANIZATION OF WORK (agenda item 2) (continued)

Towards an optional protocol to the International Covenant on Economic, Social and Cultural Rights (E/C.12/1992/WP.9)

1. THE CHAIRMAN introduced the discussion note he had prepared on an optional protocol to the International Covenant on Economic, Social and Cultural Rights (E/C.12/1992/WP.9). At the outset, he would point out that the idea of an international procedure for the submission of complaints relating to the implementation of economic, social and cultural rights was not really new since such procedures had been in place for many years in the ILO and UNESCO, with regard to rights coming within their respective areas of competence; the procedure established under Economic and Social Council resolution 1503 (XLVIII) (the "1503 procedure") was also applicable to economic, cultural and social rights. Moreover, there was no basis for misgivings that with the adoption of an optional protocol establishing such a procedure, the Committee would be inundated with complaints, justified or otherwise, to the point where it could no longer cope with its work. The procedure provided in the Convention on the Elimination of All Forms of Racial Discrimination had in 10 years generated no more than a handful of complaints, as was also the case for the procedure provided in the Convention against Torture.

2. He recalled that at its sixth session the Committee had welcomed the proposal to draw up an optional protocol to the Covenant. Its members had then identified four main issues which they wished to consider at the present session, namely: who should have access to the procedure to be initiated by a protocol, the rights to be covered by that procedure, the procedural rules that would apply and the outcome envisaged. In the discussion note he had submitted to the Committee in 1992, he had considered those points in turn and outlined the various solutions available. He taken a cautious approach, considering that there was no point in proposing action that States were unlikely to accept. He had also proceeded from the assumption that complaints from individuals would not be accepted under the procedure unless they were related to situations with an impact that went beyond the narrow concerns of the individual applicant. In other words, only those cases likely to become "test" cases would be considered. Such a system gave weight to political considerations and might appear too conciliatory. In actual practice, it would not be particularly restrictive, since there were few notable problems associated with the effective exercise of economic, social and cultural rights that did not have repercussions beyond the sphere of the individual. In that context the real problem would be to choose from among the options proposed in paragraphs 21 and 22 of the discussion note those that best reflected the concept that the prejudice in question was not restricted to a single individual.

3. Mr. TEXIER considered that the principle of the indivisibility of human rights, which meant that economic, social and cultural rights should be accorded equal status with civil and political rights, underscored the need for an optional protocol to establish a complaints procedure for economic,

social and cultural rights similar to that already in existence for civil and political rights. He was persuaded that the Committee should unequivocally endorse the need for such an instrument and play a major role in drafting it.

4. With regard to the fundamental principles underlying such a procedure, and in particular who, whether State, individual or group, could exercise the right of complaint he admitted that the inter-State complaints procedure provided in article 41 of the International Covenant on Civil and Political Rights had never been invoked since the Covenant's entry into force in 1976, whereas many individual complaints had been made under the Optional Protocol to that Covenant. However, he did not consider that a collective complaints procedure should be chosen rather than an individual procedure. The very nature of economic, social and cultural rights meant that attacks on individual rights were representative of wider problems. Moreover, the Committee was hardly likely to be inundated with complaints if an individual procedure was instituted: apart from the procedures established within the United Nations system, there were courts in two regions of the world - the European Court of Human Rights and the Inter-American Court of Human Rights - that were competent to receive complaints on the subject. While it was true that both were inundated with complaints, it should be remembered that they were actual courts, which was not the case of the Committee. His objection to the idea of restricting collective complaints to non-governmental organizations having consultative status with the Economic and Social Council was that such organizations were not represented throughout the world; that would force individuals to act through intermediaries they were not necessarily familiar with, which would hamper their access to the Committee. He was doubtful whether such a restriction, which was not included in the 1503 procedure, was necessary or whether it would be a simple matter in future to expand a procedure that was limited at the outset, since it would involve negotiating amendments to the protocol. In short, the Committee should be given every latitude to rule on the representativity of a group and the objectivity of the data on which a complaint was founded.

5. On the subject to the rights to which the procedure would apply and the various options put forward - certain rights only, those covered by articles 6 to 15, or the Covenant as a whole - he was in favour of the third solution; once again it would be simpler for the Committee to proceed from the broadest possible base and then gradually narrow its field of operations as it developed its jurisprudence. In that area too, it was important not to restrict the Committee's scope at the outset.

6. As to the procedural rules to be applied, the Chairman's reasoning in his discussion note was sound, in particular with reference to the exhaustion of domestic remedies and the temporal dimension under which complaints were not admissible unless related to acts or omissions subsequent to the entry into force of the protocol in the State party concerned. As for the restriction on subject matter, that to be admissible complaints must specifically relate to the rights recognized in the Covenant, he again considered that the Committee should not have its hands tied.

7. With regard to the outcome of the procedure, he recalled that the Committee was not a court and would thus have to abide by the rule followed by the Committee on Human Rights within its sphere of competence, namely, that

once it had considered a communication, it should "forward its views to the State party concerned and to the individual". It did not seem unproductive to him to stop there. The recommendations made to States by the European Court of Human Rights, following consideration of a complaint or a group of complaints had had a useful result in France, which had thus been led to review the period of pre-trial detention. Lastly, the consideration of individual cases could help the Committee to find out how the Covenant worked in actual practice, which it might not do if it looked no further than reports from States parties, which were always very general in nature. In short, both the Committee, the States parties and the Covenant itself had much to gain from adoption of an optional protocol.

8. Mr. NENEMAN said that some of the solutions put forward for the different points under consideration represented a minimalist and others a maximalist approach. His preference would be for the maximalist approach, since the time was ripe for it. In specific terms, he considered that the complaints procedure should apply to the entire Covenant, and individuals, in the same way as groups and States, should be able to submit complaints. In the case of groups, that right should be accorded to all non-governmental organizations operating at the national level which had the closest knowledge of the domestic situation; it should not be confined to non-governmental organizations enjoying consultative status with the Economic and Social Council. A glance at the list was enough to show that such organizations were by no means evenly represented throughout the world and far from covering the entire range of possible interests. With regard to individual complaints, it would be advisable to admit only those denouncing a systematic act or omission; otherwise the Committee might become involved in matters beyond its terms of reference. Turning to the procedural rules, he considered some of the restrictions proposed to be reasonable, in particular the rule of non-duplication of procedures, set out in paragraph 47 of the discussion note, and stipulation concerning the exhaustion of all available domestic remedies, if only for the simple reason that the problem might well be resolved at the domestic level without the need for recourse to an international body.

9. Mr. SIMMA said that, at best, States had reservations about the idea of adopting an optional protocol to the International Covenant on Economic, Social and Cultural Rights. It was therefore vital that the Committee should take great care in drawing up any recommendation to that effect and examine all the difficulties inherent in such a project in order to anticipate any objections it would meet from States.

10. The temporal dimension referred to in paragraph 41 of the Chairman's discussion note, which stipulated that complaints were only admissible in so far as they related to acts or omissions which occurred after the protocol had come into effect for the State party concerned, appeared self-evident in the case of civil and political rights, but was not necessarily so for economic, social and cultural rights. For example, how would the rule that complaints could not have retrospective effect be applied in cases where a complaint pointed to serious and long-standing defects in the educational system or health services of a country? It would be years before such complaints could be declared admissible, and during that time the situation would simply become worse.

11. As for exercise of the right of complaint, the fact that there had been no recourse to the inter-State procedures provided for by the United Nations system or at the regional level did not mean that the possibility of such procedures should be ruled out. It could well be that States' attitudes to human rights would change so that one day they might wish to invoke an inter-State procedure, which might then prove more useful than at present.

12. Like the Chairman, he considered that the Committee should accept petitions from both individuals and groups (para. 20). However, when the petitioner was an individual, the requirement that he must show that the issue raised affected a "significant" number of people, was "patterned" or "systematic" (para. 21) or was evidence of "persistent discrimination" (para. 22) raised serious difficulties. In fact, a typical victim of an economic, social or cultural rights violation (the right to housing or the right to food) would have great difficulty in proving that his case was only one of the components in an overall pattern. His situation differed from that of the typical victim of a civil or political rights violation, who was frequently a political activist, educated enough to be able to prove his point. He therefore felt that individual communications should simply be accepted without having to meet a criterion.

13. That criterion would also set a difficult problem with regard to the admissibility of complaints. In the procedure established by Economic and Social Council resolution 1503 (XLVIII), generally referred to as the "1503 procedure", the decision concerning admissibility was administrative rather than legal in character. If the Committee wished to take a genuinely legal approach, the criterion to the effect that the act or omission cited must be "systematic" would be inapplicable as a test of admissibility intended to "exclude cases which clearly involved only isolated incidents affecting only one individual and practised by only one respondent" (para. 21). Only through a consideration of the background to the affair could the Committee come to such a conclusion.

14. Mrs. IDER said that the time had come for the Committee to recommend the preparation of an optional protocol. Indeed, the principle of the indivisibility of human rights required a protocol for economic, social and cultural rights in the same way as for civil and political rights. The existence of such a protocol would enhance the importance of the rights contained in the Covenant. It must be recognized, however, that the realization of economic, social and cultural rights depended largely on countries' economic and financial potential and that, given the difficult situation in which they found themselves, it was not likely that very many developing countries would ratify such a protocol. However, since the drafting and ratification of such an instrument would necessarily take time, it was advisable for the Committee to tackle the matter without delay.

15. Complaints made by States should be accepted. In the case of economic, social and cultural rights, they were likely to be more numerous than in the case of civil and political rights, because of the scale of migration between countries or even from one continent to another, which would probably lead many States to avail themselves of the procedure. In addition, the Committee should accept complaints from individuals and groups. Like Mr. Neneman, she considered that the non-governmental organizations in consultative status with

the Economic and Social Council should not be the only collective organizations entitled to submit complaints. Non-governmental organizations in Asia, which did not enjoy that status, were very active and ought to be allowed such a role. As far as complaints from individuals were concerned, the violations in question should not have to be "systematic" or "persistent", which would be very difficult to prove. It might be sufficient to require that the same matter was not already being examined under another international procedure and that all available domestic remedies had been exhausted - the conditions of admissibility provided in the Optional Protocol to the International Covenant on Civil and Political Rights (art. 5) - and that the complaint should be made within a given time-limit.

16. Mr. RATTRAY said that he also considered it was time for the Committee to consider the need for an optional protocol. The Chairman's discussion note set out the points to be considered in that regard and gave the Chairman's views on the subject. His own position was neither maximalist or minimalist but realistic: he hoped to arrive at a protocol that had a good chance of being ratified by as many States as possible.

17. On the question of who could exercise the right of complaint, he was not in favour of the procedure under which one or more States parties might lodge a complaint against another State party (para. 14). That was likely to politicize the system, making the protocol less acceptable, and less easy to ratify. As for the choice between an individual and a collective procedure (para. 16), he considered that the matter should be governed by the legal principle of locus standi. In the case of economic, social and cultural rights, an individual affected by a situation was a party concerned. Several persons with similar interests could, of course, be affected simultaneously by the same situation (as in the case of minority groups, for example). One or more of such persons might thus lodge a complaint on their own behalf and on behalf of other persons with the same interests. Non-governmental organizations and other groups could not be permitted to lodge complaints on their own behalf as they could not themselves be the victim of a situation. However, they could take representative action on behalf of the victims of the violation notified to the Committee.

18. What proof was necessary to establish the legitimacy of a complaint? In his view, a single, isolated act was insufficient. That isolated act would have to be shown to be part of a pattern or one of a series of many acts of the same kind, or directed against a specific group as such. Like Mr. Simma, he felt that many of the criteria of admissibility adduced in the discussion note were not quite apposite. However, they might enable the Committee to reject a clearly frivolous complaint in the early stages of the procedure.

19. Mr. KONATE said it was perhaps too soon to contemplate the preparation of an optional protocol, at a time when the Committee still lacked sufficient experience. It was by no means certain that States shared its outlook on the Covenant and the extent to which the rights set forth in the International Covenant on Economic, Social and Cultural Rights could be translated into rules of positive law was unclear.

20. In his view, two criteria governing admissibility of complaints should be dismissed: the requirements that the complaint be significant or the action in question systematic. Who would be responsible for deciding what was significant or systematic? Would it be left to the discretion of the Committee? Would it also have to be recognized by the State party? The criteria were not merely vague, they were also dangerous, since they could lead to a miscarriage of justice. The criteria set out in existing instruments (as mentioned by Mrs. Ider) were perfectly adequate. Even so, the requirement for all domestic remedies to be exhausted could in some systems be too restrictive. In Senegal, for example, it could lead to very long delays.

21. A clear distinction had to be made between States and individuals in exercise of the right of complaint. In the case of civil and political rights, the provisions governing inter-State complaints appeared under article 41 of the Covenant, whereas those governing complaints by individuals appeared under article 1 of the Optional Protocol. The procedure differed somewhat depending on the case. If States' right of complaint was upheld, the Committee would have to consider whether such a distinction should be maintained.

22. It was difficult to say right away whether a complaint should be an individual or a collective procedure. As the Chairman had noted in his discussion note (para. 16), economic, social and cultural rights were of an essentially collective nature, whereas the Covenant explicitly referred to the rights of the individual, "everyone". Pleas would thus have to be accepted from both individuals and groups. Recognition of the representativity or otherwise of an organization, provided it was lawful, should not be left to the State. Any group or association should be able to represent the plaintiff.

23. He counselled members of the Committee against the approach in which States parties would be asked to indicate at the time of ratification the rights to which the procedure would apply in respect of themselves, since they might choose some rights and reject others that were nevertheless of fundamental importance. As for establishing a minimum number of rights, he pointed out that unlike the International Covenant on Civil and Political Rights which designated a number of articles from which no form of derogation could be made, the International Covenant on Economic, Social and Cultural Rights made no provision for any derogation and constituted in itself the minimum to be respected.

24. With regard to procedural rules, he wished to dispel some confusion between the criteria of jurisdiction and nationality, by pointing out that any person within the territory of a given State was subject to the laws of that State.

25. Although noting that States in general had reservations about optional protocols, he urged the Chairman to continue his work and hoped that States would appreciate the labours of the members of the Committee.

26. Mrs. BONOAN-DANDAN began by thanking the Chairman for his objective introduction of the various options that could be taken into consideration when drawing up an optional protocol. In an attempt to put herself in the

place of the victims of abuse of the rights set forth in the Covenant, she wondered, for example, what recourse a Philippine citizen would have whose child had been kidnapped and taken to Hong Kong, where it had suffered amputation and was forced to beg. That was abuse committed not at national but at regional level. Even if the mother appealed to the Government, the latter could do little unless it was prepared to break off diplomatic relations with the State concerned. Her only hope would lie with the Committee, unless the optional protocol could only be invoked by nationals of the State in question. For that reason, she considered that there had to be an inter-State complaints system to allow nationals of one State whose rights had been violated by another State to obtain redress. The time had come for the Committee to have an optional protocol available to it so that its work might take on a more human and less abstract character.

27. Mr. MRATCHKOV also thanked the Chairman for his very useful paper, which provided the Committee with a sound basis for discussion. Favouring the preparation of an optional protocol to the Covenant, he welcomed the progress the Committee had made in that direction over the past two years.

28. In his view, the Committee should consider an inter-State complaints procedure, despite the difficulties that might be entailed, in order to allow one or more States parties to lodge a complaint against another State party held not to have discharged the obligations incumbent on it under the Covenant. He further considered that complaints from groups of any kind should be allowed. If States parties were to be allowed to determine which groups should be authorized to lodge complaints, they might keep the number down, and, for example, restrict the right to token trade unions. Individuals should also be entitled to appeal to the Committee after all domestic remedies had been exhausted.

29. He considered that the procedure established by the optional protocol should apply to all the rights established in the Covenant, although conceding that some rights, such as those set out in article 11 of the Covenant, would cause difficulties. Similarly, he recognized that it would be very difficult, in the case of a complaint, to assess whether the provisions of article 2, under which States parties undertook to achieve progressively the full realization of the rights recognized in the Covenant, had been respected. It should be noted that an optional protocol would give the Committee, whether it wished it or not, a more jurisdictional role.

30. Referring to paragraph 47 of document E/C.12/1992/WP.9, on non-duplication of procedures, he wondered whether a complaint ought to be deemed inadmissible if another international body had already ruled on it. He recalled that a number of the rights set out in the Covenant, such as the right to freedom of association, were established in other international instruments, for example in ILO Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organize, as well as in the International Covenant on Civil and Political Rights (art. 22).

31. In conclusion, he noted that in the French version of the document submitted by the Chairman (E/C.12/1992/WP.9), the acronym "ILO" had been translated by "BIT", whereas "OIT" would have been more correct.

32. Mrs. JIMENEZ BUTRAGEÑO said she also thought an inter-State complaints system should be considered. Furthermore, complaints should be allowed from any association, not merely non-governmental organizations with consultative status.

33. Referring to paragraph 36 of document E/C.12/1992/WP.9, she found the proposal for avoiding politicizing of the procedure interesting, noting that complaints relating to the right to self-determination could be laid before other international bodies. With regard to the criterion of admissibility ratione temporis proposed in paragraph 41 of the document, the procedure should not be limited to complaints relating to acts or omissions which occurred after the entry into force of the optional protocol for the State party concerned. In that respect, she noted that the Committee against Torture had, for example, recommended that in certain cases compensation should be paid to the victims of acts of torture committed before the entry into force of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She therefore proposed that the optional protocol should contain a provision allowing the lodging of complaints about violations committed before its entry into effect.

34. In conclusion, she thanked the Chairman for his discussion note, encouraged him to continue his efforts and assured him of the support of the members of the Committee.

35. Mr. WIMER ZEMBRANO said that although he had followed the debate on the discussion note submitted by the Chairman with great interest, he did not consider the time to be ripe for the consideration of specific aspects of a draft protocol; there should instead be an open and general debate on the matter. He noted that all members of the Committee were in favour of the adoption of an optional protocol. The next stage should be to tackle more specific issues such as the technical and political problems that might arise and the pitfalls to be avoided.

36. Mr. KOUZNETSOV congratulated the Chairman on his discussion note, which had given rise to a very interesting debate. He proposed that the realistic approach proposed by Mr. Rattray should be followed. It was important that elaboration of an optional protocol could not be entrusted to a single member of the Committee; all should be involved. His own contribution would not be wanting.

37. Mr. FOFANA congratulated the Chairman on the logical way in which he had presented the various options. However, he felt there was also a need to consider the case of the developing countries. Underdevelopment was frequently put forward as an exceptional circumstance that dispensed the State parties concerned from fully implementing the provisions of the Covenant. He feared that States parties might invoke their underdevelopment as a reason for not adopting the optional protocol. States parties would therefore have to be shown that underdevelopment was not an obstacle to ratification of the protocol.

38. Mr. SIMMA said he wondered whether the procedure for friendly settlement of complaints covered in paragraph 50 of the discussion note (E/C.12/1992/WP.9), was compatible with the criterion requiring a "systematic"

act or omission. If a friendly settlement was achieved between a State and an individual, how would that affect other persons in a similar or somewhat comparable situation?

39. Furthermore, it must be borne in mind that matters relating to the abuse of economic, social and cultural rights were more difficult to deal with than in the case of civil and political rights, particularly in the light of article 2 of the International Covenant on Economic, Social and Political Rights, which left the concept of violation somewhat unclear.

40. Finally, he considered that the procedures covered in paragraphs 5 to 7 of the discussion note were very restricted in scope (in the case of the procedures used by the ILO, UNESCO and within the inter-American system), were confidential (UNESCO), or had never applied (resolution 1503). None of the instruments mentioned covered as broad a range of rights as the International Covenant on Economic, Social and Cultural Rights and their value as a precedent was thus limited. It was also important to ask whether the procedure envisaged should apply to all the economic, social and cultural rights mentioned in articles 6 to 15 of the Covenant.

41. In practical terms, there was a need to combine the discussion note submitted to the current session (E/C.12/1992/WP.9) with that submitted to the Committee at its sixth session (E/C.12/1991/WP.2). Such a document, which should also reflect the views expressed during the present discussion, ought to appear in the Committee's report and be communicated to the World Conference, together with a recommendation that the Conference should examine it carefully.

42. Mr. SPARSIS said that a protocol of the type under consideration should be applicable to all the articles of the Covenant. He recalled further that the procedure adopted by the ILO included strict penalties, up to expulsion of the State concerned. However, he doubted whether the Committee was in a position to envisage that approach and considered that it should rely on persuasion.

43. Mr. TEXIER said that he wished to make plain that he had no objection to an inter-State complaints system; he had merely noted that in practice such a procedure had rarely been invoked in the context of the international instruments that made provision for it. However, it might be of greater relevance in the context of the Covenant than in the case of other international instruments, since it would allow a State party to lodge a complaint against another State party, if it considered the latter to be in violation of its economic, social and cultural rights. That could be the case, for example, when pollution or a nuclear accident occurred or when a State party imposed an embargo on another for purely political reasons.

44. Mrs. PINET (World Health Organization) said that WHO received many complaints from individuals which it was unfortunately unable to follow up other than by publicizing them or attempting to persuade Member States to remedy the matters under dispute. WHO would therefore find it useful to be able to forward such complaints to the Committee should it be eligible to receive them.

45. As far as the right to health was concerned, two specific problems had to be borne in mind. On the one hand, it could be difficult to demonstrate that a violation was systematic. On the other, it was difficult for individuals to be familiar with all the domestic remedies available to them since public and private health care systems often existed side by side.

46. The CHAIRMAN recalled that the Committee's task was limited to discussion, and that the final decision regarding the adoption of a protocol and the form it should take was a matter for States parties.

47. Summing up the Committee's discussions, he noted that all members agreed that the procedure should be open to individuals and to groups, provided that the groups in question were representative of the victims.

48. With regard to inter-State complaints, the report would have to record the misgivings expressed by some experts that such a procedure might become politicized. Furthermore, the issue of the amount of publicity to be given to complaints remained unresolved.

49. With regard to the actual procedure, he considered Mr. Rattray's comment to be well advised and that, as in domestic procedures, the Committee should not only consider the admissibility of a complaint but also look into the basic issues involved.

50. There also appeared to be consensus among the members of the Committee that any optional protocol should cover all the rights recognized in the Covenant. However, in some cases - for example with regard to the right to food or the right to housing - the Committee would often be forced to acknowledge that article 2 of the Covenant made it difficult to admit some complaints. In any event, the procedure was relevant since it would allow the Committee to tackle actual cases, which was very difficult at present.

51. As for the temporal dimension of the procedure, he considered that the Committee should take its cue from the procedure adopted by the Human Rights Committee, under which a complaint relating to a long-standing violation was admissible if that violation continued after the entry into effect of the Optional Protocol.

52. In the case of an amicable settlement, he recalled that the European Convention on Human Rights contained a provision whereby any amicable settlement had to be compatible with respect for human rights. The Committee should make sure, even where both parties were satisfied with an amicable settlement, that human rights had been respected and that the measures intended to improve the enjoyment of economic, social and cultural rights were also applicable to persons in a similar or comparable situation to that of the person lodging the complaint.

53. Lastly, he proposed, as Mr. Simma had suggested, that a paper should be prepared that would combine the two discussion notes submitted to the sixth and seventh sessions (E/C.12/1992/WP.9 and E/C.12/1991/WP.2) and reflect the opinions expressed during the present debate. The resulting document could be

adopted at the same time as the Committee's report, of which it could form part, so that it might duly be considered by the Commission on Human Rights and the Economic and Social Council. The Committee might also forward the document to the World Conference on Human Rights, with a recommendation to examine the matter.

54. If there was no objection, he would take it that the Committee adopted that proposal.

55. It was so decided.

The meeting rose at 5.50 p.m.

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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Seventh session

SUMMARY RECORD OF THE 12th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 2 December 1992, at 3 p.m.

Chairman: Mr. ALSTON

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GE.92-18709 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS (agenda item 5)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Hungary (E/1990/7/Add.10, HRI/CORE/1/Add.11, E/C.12/WG/1992/CRP.1/Rev.1) (continued)

1. At the invitation of the Chairman, Mr. Lontai and Mr. Szapora (Hungary) took places at the Committee table.

2. Mr. LONTAI (Hungary) drew attention to the list of issues drawn up by the Pre-sessional Working Group (E/C.12/WG/1992/CRP.1/Rev.1) and said that the replies to a number of those questions could be found in the core document submitted by Hungary (HRI/CORE/1/Add.11) and in the additional information submitted in written form in an unnumbered document by the Hungarian delegation in addition to that country's second periodic report (E/1990/7/Add.10). He had already answered those questions in part at the time when he had introduced Hungary's report. He would now endeavour to complete the answers.

3. With regard to the second issue in the list, concerning the status of international instruments in the Hungarian legal system, he explained that ratification of an international convention was not sufficient to incorporate it in internal law. For that to happen, the law had to be published in the Official Gazette. The Constitution had primacy over laws, but there was no order of precedence among the various laws. The constitutional monitoring of laws came within the competence of the Constitutional Court. The latter could exercise its supervisory powers either a priori (over a bill, a law which had already been adopted but not promulgated, or an international convention that had already been signed but not ratified), or a posteriori (the procedure might then be initiated by any citizen). In order to institute proceedings based on an international convention, in a Hungarian court, that convention must have become an integral part of the Hungarian legal system, in other words, it must have been promulgated as a law.

4. In order to supplement the answers already given on issue No. 14 on the list, he cited the following statistics on education: with regard to nursery schools, there had been 4,690 such establishments in 1980, 4,823 in 1985 and 4,706 in 1991. In the same years, the number of pupils enrolled was 478,100, 424,678 and 394,091 respectively. The proportion of children enrolled in school in that age group was 77.9 per cent, 87.2 per cent and 88.9 per cent respectively. With regard to primary schools, there were 3,633 such establishments in 1980, 3,546 in 1985 and 3,641 in 1991. In the same years, the total number of pupils was 1,162,203, 1,297,818 and 1,081,013. The proportion of children attending school in that age group was 97.3 per cent, 95.7 per cent and 96.7 per cent respectively. With regard to secondary educational establishments, there were 531 in 1980, 561 in 1985 and 780 in 1991. In the same years, the total number of pupils was 203,238, 236,104 and 309,351 respectively. The proportion of the corresponding age group enrolled in those schools was 40.1 per cent, 40 per cent and 43 per cent respectively.

With regard to universities and institutes of higher education, there were 57 such establishments in 1981, 58 in 1985 and 77 in 1991. In the same years, the total number of students in these establishments was 64,057, 64,190 and 83,191 respectively. The proportion of students in the corresponding age group was 9.2 per cent, 9.9 per cent and 10.7 per cent respectively.

5. The answers already given to issue No. 11 on the list could be supplemented by the following information: in 1981, spending on education had accounted for 3.57 per cent of GNP, in 1985, 6.68 per cent of the budget and 4.18 per cent of GNP, in 1991, 9.8 per cent of the budget and 6.48 per cent of GNP. In 1981 spending on culture had represented 0.84 per cent of GNP, in 1985, 1.70 per cent of the budget and 1.07 per cent of GNP and, in 1991, 1.86 per cent of the budget and 1.32 per cent of GNP. Spending on research and development had represented 2.49 per cent of GNP in 1981, 2.36 per cent in 1985 and 1.69 per cent in 1990, which showed a decrease over the ten-year period studied. The funding of research was quite complex. The National Technical Development Committee subsidized research by underwriting part of the risk. If research already financed produced positive results, a certain sum would revert to it. The National Technical Development Committee therefore had more resources at its disposal than those it received from the budget.

6. According to recent information, there were 102 private schools currently in existence. Schools administered by churches were regarded as private schools, but there were others set up by juridical persons, foundations, etc. A secondary school for gypsy children had just been set up, on the initiative of gypsy artists. The competent authorities had the right to ensure that private educational establishments had adequate human resources (qualified teachers) and material resources to provide teaching at the required level. The establishment of a private primary or secondary school was subject to authorization by the local authorities, a university, and Parliament. Three private universities were currently in existence. Private teaching establishments which awarded certificates or diplomas equivalent to those awarded by public educational establishments received a State subsidy. The subsidy for church schools was the same as the subsidy for public schools. For other private schools, the subsidy was determined by a contract drawn up between the teaching establishment and the competent authority. The existence of private teaching establishments made the education system more flexible, more varied and allowed a degree of healthy competition. Privatization, however, did not mean that the State lost its dominant influence in that field. In fact the State retained a measure of control over the level of instruction due to the subsidies it granted. Moreover, public schools remained in the majority.

7. Parents had the right to choose the school to which they would send their children. They could choose, for instance, between a State school and a private school, including denominational schools, or alternatively between an academic high school and a vocational secondary school. The child also had to be consulted and, in the case of a difference of opinion, the wishes of the guardian prevailed.

8. With regard to religious education and the relationship between the State and the churches, the answers to issues Nos. 15 to 18 drawn up by the Working

Party could be found in the additional information (document without symbol number). According to estimates, 60 per cent of the population was Catholic. However, the relations between the State and the various denominations did not give rise to any discrimination in the granting of subsidies or the allocation of premises, etc. Clarifying what he understood by "the traditional role of the Church", he pointed out that Hungary had been a Christian country for over a thousand years. As elsewhere in Europe, schools had initially been administered exclusively by the Catholic Church, then, after the Reformation, by the various churches. Even following the Second World War and until the schools had been taken over by the State in 1948, the majority of educational establishments had been dependent on the churches. The communist regime, which disapproved of religious education, had limited the number of denominational schools. Religious education for children had been permitted but had not been easy: in fact, religious education had been made the exclusive province of the church, but enrolment had taken place in schools where teachers had had instructions to try and dissuade parents. At the present time, religious education was provided in both public and private schools, and was included in the curriculum, although it was optional.

9. The bill on national and ethnic minorities would define the legal status of so-called indigenous minorities. The bill listed 13 such minorities, but that figure was in fact not exhaustive: if another ethnic group wished to qualify as an indigenous minority, an initiative on the part of 1,000 citizens would suffice. He had mentioned gypsies separately partly because they represented a fairly large and growing proportion (60 to 70 per cent) of the population belonging to minority groups and partly because they did not have a specific mother tongue. The gypsy language or languages were spoken by only a small proportion of the gypsy population, although works of gypsy authors were already written in gypsy language and a Hungarian gypsy dictionary had been published. Special measures were therefore needed for them.

10. With regard to the extent to which non-nationals were guaranteed the rights dealt with in articles 13 to 15 of the Covenant (No. 4 of the list of issues), he explained that the right to education was guaranteed to Hungarian citizens by the Constitution, whilst education for foreigners resident in Hungary was governed by special legislative provisions. Secondary and higher education were not free of charge for foreign students, who could nevertheless receive a grant. Both Hungarian citizens and foreigners were admitted to university on the basis of an examination. They were required to know Hungarian, although some universities already gave courses in English and German. A specialized institute (the International Preparatory Institute) gave foreigners wishing to enter higher education in Hungary the necessary teaching, in the Hungarian language notably, to bring them up to the required level.

11. With regard to the education provided for refugees, at the present time there were more than 100,000 refugees in Hungary, most of them de facto refugees. Half came from Romania and were of Hungarian stock. Since 1991, refugees from the former Yugoslavia had predominated. There were about 50,000 of them and they lived either with families or in camps. Of the Yugoslav refugees, only 27 per cent were of Hungarian extraction, more than 50 per cent were Croats and 30 per cent were Muslims (Bosnian). Children constituted 27 per cent of the refugee population. The assistance which Hungary gave to

these refugees was well in excess of what was prescribed by its international obligations, and the foreign or international contribution covered only 10 per cent of the assistance. Refugee children who did not speak Hungarian were taught in Hungarian so-called minority mother tongue schools or in schools set up specially for that purpose. Most textbooks used in the teaching of those children came from their country of origin, and the majority of the teachers were recruited from among the refugee population itself. The Hungarian authorities also provided religious education for those children.

12. In answer to the questions about changes in curriculum content, he said that the great majority of school books had not needed to be radically changed because Hungarian education had never been particularly influenced by communist ideology and it had sought mainly to inculcate the knowledge essential for a good level of culture. Nevertheless, certain historical events, such as those of October 1956 for example, were now depicted differently. At the present time, a standard national curriculum was being worked out, in consultation with teachers.

13. The legal status of teachers was governed by the Labour Code and the Civil Servants Act, both of which had entered into force on 1 July 1992. Those texts guaranteed teachers job security and assured their promotion, on the basis of seniority and merit. The remuneration of teachers was wholly inadequate and a progressive increase of 25 per cent was planned.

14. The Education Act made provision for adult education. It offered adults who had not completed the eight years of compulsory primary education (5 to 6 per cent of pupils) an opportunity to continue their education in the workplace, in the army and in schools (evening classes). The Labour Code attempted to simplify that education by granting certain benefits. Given the changes in the structure of the economy, changes of profession and advanced higher education were essential. Evening classes had been organized for that purpose and the possibility of obtaining second diplomas was being considered. Management training was fashionable and courses in that subject had been set up, many with the help of foreign subsidies.

15. With regard to information on human rights, the main sources of information were the Official Gazette, which published all conventions on human rights, the daily press and above all specialized publications. The Hungarian Human Rights Centre, which was part of the Hungarian Academy of Sciences, was currently preparing a human rights teaching handbook for publication with the help of the Centre for Human Rights in Geneva. Advanced courses in human rights were given in law faculties, the National School of Administration and the police academy. Primary school pupils were given some information on human rights during civic instruction lessons.

16. Mr. SZAPORA (Hungary), replying to questions about the social situation of retired persons in Hungary, said that 1 per cent of active teachers in Hungary were retired teachers who drew a pension but still carried on working. They received the same remuneration as other active teachers. In general, retired people in Hungary enjoyed numerous privileges: they were exempted from the annual radio and television tax (if they were over 70), could obtain a range of tickets at reduced prices, and could attend the courses of their choice free of charge, including university courses.

17. A number of statistics attested to the participation of Hungarian citizens in cultural life. Spending on culture had accounted for 0.84 per cent of GNP in 1980, 1.12 per cent in 1986 and 1.32 per cent in 1991. The number of museums, archives, theatres and cinemas had continued to increase. There had been 487 museums, for example, in 1980 and 735 in 1991 as well as 3,624 cinemas in 1980 and 10,025 in 1991.

18. The problem of censorship did not arise in Hungary. Freedom of the press was guaranteed by the Press Act of 1985, as amended by the Act of 1990. There was therefore no censorship body.

19. Mr. LONTAI (Hungary) said that a brain drain of scientists could be seen in Hungary and everywhere else in the world. It was estimated that between 10 and 15 per cent of Hungarian Scientists were employed abroad for varying periods of time. It was not, however, a totally negative phenomenon. "Wandering" scientists, artists and even factory workers were a long-standing European tradition. The Hungarian Government was attempting to introduce the necessary facilities so that the brain drain involved not only personal and professional advantages for the scientists themselves, but at the same time advantages for Hungary. To that end, Hungary played an active part in international cooperation. Hungary was now a member of CERN, the EUREKA Programme and the ACCORD project and participated in joint programmes with the OECD and the European Space Agency, among others. The Hungarian Government had concluded 15 international agreements in that field, and the Academy of Sciences over 60 bilateral agreements. He recalled that some Hungarian universities held classes in foreign languages, in particular the Faculty of Medicine and the Technical University of Budapest. The Hungarian Federation of Scientific and Technical Associations was a member of the International Federation of Engineers, and 50 Hungarian engineers had that year been awarded the qualification of European engineer.

20. In conclusion, he said that Hungary had already made the main amendments to its legislation needed to enable it to discharge its obligations under the International Covenant on Economic, Social and Cultural Rights. The Hungarian Government's intention was clear in that respect as was demonstrated by the steady increase in financial resources allocated to education and culture. He assured the Committee that Hungary's next periodic report would contain all the additional information which he had not been able to provide at that session of the Committee.

21. Mr. NENEMAN asked for further details on the religious instruction given in schools. He was particularly interested in that question because in his own country religious instruction classes were no longer given by parishes but in schools, a situation which posed certain problems. The question was important because it had a bearing on the freedom of conscience and religion.

22. Mrs. JIMENEZ BUTRAGUEÑO said that she assumed elderly people could follow any course free of charge and asked for confirmation of that assumption. She also inquired whether retired teachers who carried on teaching received a salary and if that was compatible with receiving a pension.

23. Mrs. IDER asked who was entitled to authorize the setting up of a private university or establishment in Hungary and which were the criteria used to grant that authority. She also asked how the quality of teaching in private establishments was monitored. Finally, she wondered whether foreign children could go to school and university and if there was an age limit.

24. Mr. LONTAI (Hungary) stated first of all that religious instruction was not compulsory and that it could be given by parishes or in schools. According to recent information, it appeared that children preferred to take religious instruction in schools. That being the case, they were free not to attend those classes.

25. In reply to questions from Mrs. Ider on education, he said that foreign students who had passed their final school leaving exams could go to university on condition that they passed the entrance exams. There was no discrimination as far as that was concerned. Students who wished to go to university but who did not speak Hungarian could learn the language in a preparatory institute. He reiterated that education was compulsory from 6 to 16 years of age and that pupils had to complete primary education in order to enter secondary school, and to have completed secondary education in order to go on to university. There was no age limit as such: if a foreign student had obtained a final leaving certificate at the age of 16, nothing prevented that student attempting to enter university.

26. Mr. SZAPORA (Hungary) replying to questions put by Mrs. Jimenez Butragueño, stated that retired teachers could teach when they wished because there was a shortage of qualified teachers in Hungary. They were entitled to the same remuneration as teachers who were not retired. Elderly people had free access to university and were only required to pay reduced enrolment fees.

27. Mr. LONTAI (Hungary) said retired teachers who carried on working received the same salary as all other teachers, but he did not know the basis on which their taxes were calculated.

28. The CHAIRMAN thanked the Hungarian delegation for introducing Hungary's report and replying to the questions put to them.

29. Mr. Lontai and Mr. Szapora (Hungary) withdrew.

Belarus (E/1990/7/Add.5 and E/C.12/1992/WP.7)

30. The CHAIRMAN invited the members of the Committee to consider the text of the concluding observations on the report of Belarus, in document E/C.12/1992/WP.7.

31. Mrs. JIMENEZ BUTRAGUEÑO suggested that in the first sentence of paragraph 2 of the Spanish version the word presentada (presented) should be deleted as she considered it was unnecessary. In addition, she suggested that in the fifth sentence of the same paragraph the term impresionista (impressionistic) should be replaced by subjectivo (subjective), which, according to her, was a better way to reflect the fact that personal opinions were involved.

32. Mr. WIMER ZAMBRANO said he would also prefer not to use impresionista which was a term used mainly in art, and suggested that it should be replaced by vaga (vague) or general (general).

33. The CHAIRMAN said that more suitable terms would have to be found in the Spanish version of the text of the concluding observations.

34. Mrs. BONOAN-DANDAN felt that in the English version also, the term "impressionistic" was not appropriate and should be replaced by "subjective".

35. Mr. SIMMA felt that the term "presented" could be kept in the English version and did not see any problem in replacing "impressionistic" by "subjective", although he did not feel that term was better.

36. Mr. TEXIER pointed out that in its concluding observations, the Committee stated that it was not entirely satisfied with the report of Belarus and its introductory updating, but did not say what it expected of the authorities of this country. The Committee should indicate, for example, that it was aware of the difficulties facing Belarus and that it hoped the next report would be much more comprehensive.

37. Mr. SPARSIS, noticing an error in the fourth sentence of the second paragraph of the English version, said that the word "supplemental" should be replaced by "supplementary".

38. Mrs. JIMENEZ-BUTRAGUEÑO supported Mr. Texier's comments and suggested that the Government of Belarus should either be told that the information given was insufficient and asked for further information, or that it should be told that, understanding the difficulties facing it, the Committee would await its next report.

39. The CHAIRMAN, noting that Belarus was to submit a comprehensive report by 30 June 1994, suggested to members of the Committee that a third paragraph be added to the concluding observations, as follows: "in view of the fact that Belarus is scheduled to submit a global report by 30 June 1994, the Committee decided not to request additional information that it considered would otherwise have been required".

40. If there were no objections, he would take it that the text of the concluding observations on the report of Belarus, as amended, was adopted.

41. It was so decided.

Norway (E/1990/7/Add.7 and E/C.12/1992/WP.8)

42. The CHAIRMAN invited the members of the Committee to consider the text of the concluding observations on the report of Norway in document E/C.12/1992/WP.8.

43. Mr. NENEMAN suggested that the adjective brillante (brilliant) should be replaced by consistante (consistent) in paragraph 2 of the document.

44. Mrs. JIMENEZ BUTRAGUEÑO supported Mr. Neneman's suggestion. She also suggested that in paragraph 2 of the Spanish text the phrase se apartaba de (did not meet) should be replaced by no se ajustaba a (and did not conform to).

45. Mr. SIMMA felt that the adjective "succinct" in paragraph 2 had a very positive connotation in English and wondered whether another term should not be found. He also suggested that "very" before "great satisfaction" should be omitted as he thought it was superfluous.

46. The CHAIRMAN referred to paragraph 2 of the document and suggested that the word "succinct" might be replaced by "brief" in the English version. He also suggested that the word "very" before "great satisfaction" should be left out and that "brilliant" should be replaced by "comprehensive" in all languages.

47. Mr. KONATE had no objection to replacing "brilliant" by another adjective, but considered that the Committee was being harsh towards Norway whose report had been presented brilliantly, as the Norwegian delegation had replied to all the questions asked of it.

48. The CHAIRMAN thought that all members agreed with Mr. Konate about the presentation of Norway's report and suggested the term "exemplary" might be used if "comprehensive" was not strong enough.

49. Mr. WIMER ZAMBRANO suggested the term "comprehensive" should be used as it referred to substance more than to form and better reflected the Committee's satisfaction with regard to Norway's report.

50. Mrs. JIMENEZ BUTRAGUEÑO also considered that the term "comprehensive" should be employed as it was more objective.

51. The CHAIRMAN noted that the Committee agreed to the term "comprehensive".

52. Mr. SIMMA pointed out that the setting out of the concluding observations differed considerably depending on their author, in spite of the criteria adopted by the Committee at its sixth session. He wondered whether an effort should not be made to harmonize the presentation of those observations. The members of the Committee might follow the model conclusions adopted by the Human Rights Committee.

53. The CHAIRMAN agreed that general indications concerning the presentation of concluding observations might be useful for members of the Committee and wondered whether Mr. Simma could review the criteria adopted by the Committee at its previous session and possibly suggest changes.

54. Mr. SPARSIS pointed out that paragraph 4 of the English version of the document was clumsily worded. For example, the expression "the institution of the system" in the first sentence could be deleted.

55. The CHAIRMAN said that the problem there was one of translation and proposed to ask for the translation of that paragraph to be improved.

56. Mr. FOFANA suggested that in paragraph 4, Dans le dialogue should be replaced by du dialogue. In addition, he wished to know if the Committee was authorized to give instructions to States parties as it appeared to be doing in the last sentence of paragraph 4.

57. The CHAIRMAN replied that the Committee was not authorized to give instructions to States parties but that it could make recommendations, in the same way as other bodies created under international instruments. Although no Government had made any objections to the practice up to that time, it would be well to be cautious.

58. Mr. TEXIER said that the problem could be resolved by replacing the word demande (request) by the word recommendation (recommendation) in the last sentence of paragraph 4. In addition, he suggested that, in the same sentence, the term pour étudier be replaced by d'étudier.

59. Mr. SIMMA said he had the impression, that in connection with the protection of copyright, Norway had stated that a time-limit only applied in certain cases. In addition, he felt that he was not sufficiently knowledgeable to be able to make a judgement on the legislation of a State party on that subject and still less to make recommendations on it. For that reason, if the majority of Committee members decided to retain the two last sentences of paragraph 4 in the general comments on Norway, he would like "the Committee" to be replaced by "some members of the Committee".

60. Mr. MRATCHKOV felt that the general comments lacked coherence. In fact, the first three paragraphs indicated a very positive appreciation of Norway's contribution whilst the two final paragraphs expressed certain criticisms. In addition he suggested that "the introduction of a system of" should be omitted from the first sentence of paragraph 4 as it was superfluous. He also suggested that in paragraph 5, it should be indicated that the Committee hoped that the next report of Norway would conform to the general guidelines. Finally, he felt that in the same paragraph the word "various" should be omitted as it gave the impression that Norway was encountering numerous obstacles in realizing the rights covered by the Covenant; that did not seem to be the case.

61. Mr. RATTRAY felt, as did Mr. Simma, that the Committee could hardly argue that the limitation on the right to protection of creators and their works in Norway was too restrictive. Norway had in fact indicated that the duration of copyright protection for artists, which stood at 50 years, was not restrictive according to the Bern Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention, to which Norway was party. In addition, he stressed that article 15 (c) of the Covenant made no provision for the limitation of copyright protection. Consequently, he considered that in so far as international conventions already existed on that subject, it was difficult for the Committee to state whether the protection extended was adequate or not.

62. Mr. SPARSIS recalled that he had asked Norway whether salaries were comparable in the public and private sectors. As Norway's reply to the question had not been backed up by any proof, he would like the Committee to ask the Norwegian Government for further information on that subject.

63. Mr. KONATE said he agreed with the changes of form suggested by the Committee members. He understood the caution of some experts with regard to copyright protection, given that the Committee did not have available to it the instruments upon which it could base its judgement. He felt, therefore, that in future instruments such as the Paris Convention for the Protection of Industrial Property, the Bern Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention should be made available to the Committee, as they were essential in order to be able to understand the application of article 15 of the Covenant. In the case of Norway he still thought that copyright protection should not have a time-limit. He agreed, however, that the two sentences relating to that issue in paragraph 4 should be deleted, provided that in future, the Committee had at its disposal the necessary instruments to be able to undertake a more detailed analysis than one which consisted of giving the number of cinemas and museums which existed in a country.

64. Finally, in order to meet Mr. Mratchkov's concern, he suggested that, in paragraph 5, the words "will be submitted in accordance with general guidelines" should be inserted after the phrase "the next periodic report".

65. The CHAIRMAN agreed with Mr. Konate; he also thought that the Committee ought to have access to the main instruments relating to copyright in order to be able to express informed opinions on the subject in future.

66. In conclusion, he suggested that the two sentences relating to copyright in paragraph 4 should be omitted and that the various changes in form suggested by the members should be adopted. Finally, to meet the concern of Mr. Sparsis, he suggested the insertion at the end of paragraph 5 of the sentence "In its next report, specific attention should be given to the question of the comparability of pay in the public and private sectors".

67. If there were no objections, he would take it that the general comments on the second periodic report of Norway concerning the rights covered by article 13 to 15 of the Covenant, as amended, were adopted.

68. It was so decided.

Jamaica (E/1989/5/Add.4 and E/C.12/WG/1991/CRP.15)

69. At the invitation of the Chairman, Mrs. Betton and Mrs. Nembhard (Jamaica) took places at the Committee table.

70. The CHAIRMAN reminded the members of the Committee that the procedure to be followed for the consideration of additional information was laid down in paragraph 36 of the Committee's report on its sixth session (E/1992/23-E/C.12/1991/4). If there were no objections, he would take it that the Committee adopted the recommendations made by the Pre-sessional Working Group concerning the additional information submitted by Jamaica (E/C.12/WG/1991/CRP.15).

71. It was so decided.

72. Mrs. NEMBHARD (Jamaica) said that she wished to add some details to the additional information submitted by Jamaica in document E/1989/5/Add.4.

73. Referring to the number of workers covered by collective bargaining agreements, Mrs. Nembhard said in Jamaica that there were 34 unions and numerous professional associations which negotiated collective bargaining agreements on behalf of workers. The number of workers covered by collective bargaining agreements was estimated at 322,980 persons, or 30 per cent of the labour force.

74. With regard to the proportion of workers receiving the minimum wage, she stressed the fact that the minimum wage was designed mainly for the protection of non-unionized workers. Workers covered by collective bargaining agreements received a remuneration above the minimum wage. There were, at present, no accurate statistics as to the precise number of workers who received the minimum wage, but it was estimated that less than 5 per cent of the employed labour force fell into that category.

75. With regard to the employment of children, she said that the employment of children under 14 years of age was prohibited by law. In addition, surveys showed that in practice infringements of that law were rare. Also sections 71, 72 and 75 of the Juvenile Act provided that juveniles under the age of 16 did not have the right to work in nightwork or in specified industries. The Act forbade the employment of children under the age of 15 in any industrial undertaking. Finally, no child under 12 years old might be employed except by parents or guardians in family agricultural work, for example.

76. No worker could be suspended for more than 120 days. If suspended beyond that period, a worker had the option to claim redundancy compensation, on condition that he had been employed for at least two years on a continuous basis. Redundancy compensation was equivalent to two weeks' pay for each year of service, if the worker had been employed for 10 years or less and three weeks' pay per year of service if he had been employed for more than 10 years.

77. Although at present there was no legislation invoking the right to strike, the Government had decided to include that right in the Labour Relations and Industrial Disputes Act. The amending legislation would be brought before Parliament at the beginning of 1993.

78. She said that the Jamaican authorities were tackling the problem of juvenile delinquency in several ways. Efforts were being made by the Ministry of Education to improve school attendance by easing the financial burden on parents by the free distribution of school text-books, by free school meals at primary schools, by subsidized books and text-book rental schemes in secondary schools and by providing buses to transport school children. The Ministry also wanted to ensure that graduates had the necessary capabilities to obtain satisfactory employment: the secondary schools curriculum was being revised to place stronger emphasis on vocational training, whilst work study programmes had been designed for certain underemployed groups. The Ministry of Education had also taken a number of initiatives to provide guidance counselling services to primary schools and to increase those services at the secondary level. The first batch of counsellors for primary schools would

have finished their training in 1993. All upgrading and in-service training programmes for teachers placed emphasis on guidance counselling, family-life education and aggression control. Guidance counselling services, both professional and otherwise, were available at higher educational establishments - the University of the West Indies and the College of Arts, Science and Technology and in colleges training teachers for the primary school system.

79. With regard to the participation of males and females in the education system, she pointed out that there was no discrimination between sexes in the system. Recent research had shown that the lower participation among young people was linked, among other things, to their lack of interest in study and the attraction that sports and leisure activities held for them. It had also been suggested that the dearth in the number of men in the teaching profession, particularly at primary level, led boys to take men in more glamorous professions as their role model. There had also been a change in the value system in Jamaica: whilst young women pursued educational goals, young men sought a quick and easy route to the accumulation of wealth. Mothers also played a very dominant role in the Jamaican family structure. The perception of women as providers of the family was being absorbed by girls who wanted to equip themselves for life through their education. The performance of women in higher education had improved over the years: in 1992, 68 per cent of the graduates of the University of the West Indies were women.

80. With regard to the participation of women in political activity, 4 of the 60 elected members of the House of Representatives and 4 of the 21 members of the Senate were women; at local level, only 20 of the 189 parish counsellors were women. Women were very active in the two major political parties, which were headed by men. There were only three women among the members of the Government - one female Minister, one female Minister of State and one female Parliamentary Secretary. No political party had ever appointed more than one female member to its cabinet; there was only one woman among the Vice-Presidents of the People's National Party, which was currently in power and one woman in the shadow cabinet. However, women were destined to play an increasingly prominent role in the political life of the country and in the recent elections for Prime Minister, one of the two candidates was a women.

81. Jamaica had a matriarchal society. Women were at the head of the family. It was they who brought up the children, planned and financed their education and leisure and assured the security of the family. Women also played a dominant role in society at the social level through their activities in running voluntary associations which provided a variety of social services for the disabled, the disadvantaged, the elderly, the young, women and children as well as on a cultural and religious level.

82. In spite of the rapid progress made in the participation of women in the public sector, women were still under-represented in the higher echelons of ministries and public enterprise although they generally dominated middle management. On the other hand, the majority of diplomats were women. Of the 14 heads of mission, 7 were women, including Jamaica's Permanent Representative to the United Nations. Within the education system, the majority of principals of both primary and secondary schools were women whilst

posts on school boards were occupied mainly by men, who therefore took the decisions concerning the education system. At the tertiary level, the University of the West Indies and the College of Arts, Science and Technology were both headed by men. Women, however, occupied a significant number of important positions in administration, teaching and research at those institutions.

83. The same trends could be observed with regard to women in the private sector. Only very few large and medium-sized enterprises were managed by women: one in nine enterprises in one branch of industrial activity and one in 17 in another branch. There were more women at middle-management level in those enterprises although they were still under-represented (42 per cent of middle-level managers). The majority of small enterprises were owned and managed by women.

84. Over the years, there had been an increase in the number of women holding positions of leadership in Jamaica and that trend was expected to continue if the educational achievements of women continued to outstrip those of men.

85. The CHAIRMAN said that, with that additional information, the Jamaican Government had replied in a systematic, detailed and comprehensive manner to the specific questions put to it by the Committee. He noted that the members of the Committee had nothing to add at that stage and said that the Committee had thus concluded its consideration of the additional information submitted by Jamaica.

86. Mrs. Betton and Mrs. Nembhard (Jamaica) withdrew.

ORGANIZATION OF WORK (agenda item 2) (continued)

Working methods of the Committee: the procedure to be followed for requesting additional information and for its consideration

87. The CHAIRMAN raised the question of the merits of the procedure followed by the Committee for considering the information requested in addition to the reports submitted by States parties: should the practice of encouraging Governments to send representatives to Geneva to present that information be continued or should the Committee make do with receiving the information in written form? He suggested that the Committee should ask one of its members to give some thought to the question and possibly to submit to it, informally, some guidelines which would be reflected in chapter III of its report entitled "Overview of the present working methods of the Committee".

88. Mr. SIMMA acknowledged that the entire procedure was somewhat confined. If one took, for example, the recommendations made by the Pre-sessional Working Group (E/C.12/WG/1991/CRP.15) concerning the additional information submitted by Jamaica, one saw that the Group began by recapitulating that information before asking for fresh information, some of which was unrelated to the information already submitted, and then asked for that fresh information to be included in Jamaica's next periodic report. The Government sent a delegation to submit orally to the Committee the information which the Working Group would wish to consider in three years' time. In the meantime, would the Committee reconsider the wish of the Working Group? He would like

the Chairman or the Secretary of the Committee to review the situation with regard to Jamaica, taking in their order the document submitted and considered.

89. The CHAIRMAN said that the problem was in fact much broader. The procedure of requesting additional information was certainly useful, because it allowed the Committee to resume its study of certain issues at its following session rather than to wait five years in order to do so, when, the next report of the States party concerned was submitted. However, those problems were sometimes serious and could not wait. In that eventuality, the Committee might consider entrusting the Officers with the task of following up the matter or authorizing him in advance to communicate directly with the Government of the State party concerned if the additional information had not been received within a period of, say, three months. The Committee should also decide on the action to be taken if a State party failed to submit the additional information. It was a matter of urgency for the Committee to do so because the problem would arise at the present session. He understood that Mr. Simma could agree to look at that question together with some other members and to report back to the Committee during the final week of the present session.

90. He recalled, further, that at its eighth session, the Committee was scheduled to consider reports of four States parties which had not yet been submitted. At its ninth session, with Senegal's report, the Committee would have worked off the backlog in its consideration of reports. It had to decide at the present session whether other States parties which had never submitted reports should also be scheduled for consideration at the next session. If the Committee proceeded thus in advance, it would give those States parties the time they needed to prepare their reports. Accordingly, the Committee could send the States parties in question a letter drawing their attention to the fact that they had not submitted a report for a number of years and requesting them to do so as a matter of urgency. The letter would also notify them that the Committee would consider the way in which they discharged their obligations under the Covenant at a particular session, whether or not they had submitted a report.

91. Mr. SIMMA expressed misgivings that proceeding in such a way might induce States parties in arrears to take the easy way out by not drawing up a report and simply sending a representative to Geneva to answer the list of issues sent in advance. The Committee would thus be doing an injustice to those States parties which did submit reports. He advocated a stricter attitude towards States parties which were late in submitting reports: the practice of sending lists of issues in advance to States parties might be discontinued and all the questions simply put to the representatives sent by them to Geneva.

92. The CHAIRMAN said that he was not convinced that the list of issues should simply be scrapped. The idea was that the main points to be taken up should be indicated in advance in order to guide the debate and thus make it more productive. He recalled that the majority of States parties were developing countries with very limited resources which could therefore not afford to send more than one or two representatives to Geneva to submit their report. It would be unfair to bombard these representatives with questions on

a whole range of economic, social and cultural rights. The punitive element should not prevail over the aim of the exercise, which was to enter into constructive dialogue with States parties.

93. Another solution would be for the Committee to make an agreed statement in which it would indicate that the new procedure it had adopted did not exempt States parties from fulfilling their reporting obligations, that it would regretfully, in the absence of any report, be obliged to consider the situation in a given country and that the list of issues sent to States parties in advance was not exhaustive. He invited the Committee to consider further the way in which it should proceed with regard to States parties which had never submitted a report and also to consider whether or not it should envisage at that juncture considering the report - or the situation - of 8 or 10 other States parties at its November 1993 session.

94. Mr. KONATE wondered whether the Committee ought not to offer States parties whose reports were overdue and which were developing countries the services of an expert to help them in drafting their reports. It was likely that many developing counties would accept such a proposal, which was pragmatic and positive.

95. The CHAIRMAN reminded the Committee that the Economic and Social Council, in decision 1992/260, had stated that States might, if they wished, avail themselves of the advisory services available from the Centre for Human Rights to assist them in the preparation of their overdue reports. None of the States concerned had taken up that offer; that did not prevent it being repeated. He proposed to revert to the question at a later stage.

The meeting rose at 6.05 p.m.